IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Appeal from Order No. 487 of 2004

Date of decision: 5th September, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note:- Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 487 of 2004

1. Smt. Pushpa Devi W/o Late Vijay Bahuguna.
2. Km. Sandhiya D/o Late Vijay Bahuguna.
3. Km. Shweta D/o Late Vijay Bahuguna.
4. Km. Sarika D/o Late Vijay Bahuguna.
5. Ullas S/o Late Vijay Bahuguna.
6. Abhinas D/o Late Vijay Bahuguna.
   Through their natural guardian Smt. Pushpa Devi.
7. Bhagwati Prasad (father of deceased).
8. Smt. Sita Devi (mother of deceased).
   All R/o Village Sirai, Patti Juwa,
   District Tehri Garhwal.
   Presently R/o Ward No. 8, Mandir Mohalla,
   Mussoorie Road, Chamba,
   Tehri Garhwal.

…… Appellants

Versus

National Insurance Company Ltd.,
Through its Branch Manager, Chamba,
District Tehri Garhwal.

……. Respondent

Mr. N.S. Pundir, Advocate for the appellants.
Mr. D.S. Patni, Advocate for the respondent.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal under Section 173 of the Motor Vehicles Act against the Award Dated 19.03.2002 passed by Motor Accident Claims Tribunal /District Judge, Tehri Garhwal in Motor Accident Claim Petition No. 46 of 1998.

2. The claimants , who are unfortunate widow, minor children and parents of deceased Vijay Kumar Bahuguna, claimed compensation of Rs. 11,06,000/- for his death in the motor accident when his motorcycle bearing registration No. UHA 9448 dashed against a boulder, as a result whereof, he and his motorcycle fell in the river

resulting in his death. The claimants pleaded that deceased Vijay Kumar Bahuguna was aged about 45 years on the date of the accident and was getting salary of Rs. 11,000/- as Senior Clerk in the office of State Bank of India, Chamba.

3. The insurer of the motorcycle contested the claim and denied its liability to pay compensation to the claimants on the plea that the insurance policy taken by the deceased, who was the owner of the motorcycle, did not cover the risk of the owner (insured).

4. The claimants examined PW1 Pushpa Devi, PW2 Ganesh Raturi and PW3 Prem Kumar Dobhal in support of their case, whereas the Insurance Company examined DW1 Mani Ram Nautiyal.

5. The Tribunal, on the evidence led by the parties held that Vijay Kumar Bahuguna died on account of the injuries sustained by him in the accident. The claimants, however, were not found entitled to receive any compensation from the insurer of the motorcycle on the ground that the insurance policy, in the case, did not cover the risk of the owner of the motorcycle (deceased Vijay Kumar Bahuguna). The Tribunal, therefore, dismissed the claim petition.

6. Mr. N.S. Pundir, the learned counsel for the appellants vehemently argued that the Tribunal has erred in dismissing the claim petition and in not awarding the compensation sought by the claimants.

7. Mr. D.S. Patni, the learned counsel for the respondent, relying upon the dictum of the Apex Court, in the case of **Dhanraj Vs. New India Assurance Company Ltd. and another** reported in **2004 (7) Supreme 164**, supported the Award and contended that as the owner of the vehicle did not pay any extra premium for covering his own risk, the claimants are not entitled to get any compensation from the Insurance Company.

8. It is, indeed, an unfortunate case, where the claimants, who are widow, minor children and parents of deceased Vijay Kumar Bahuguna, are denied compensation. If any one is to be blamed for this unfortunate situation, it is the deceased himself and none else. By paying extra premium to the Insurance Company, he could have covered his own risk also. Be that as it may, the fact remains that insurance policy in the present case does not cover the risk of the motor cycle owner (insured).

9. The Apex Court, while considering the risks covered by a comprehensive policy in the case of Dhanarj Vs. New Indian Assurance Company Ltd. and another (supra), observed in paras 8 to 10:

> "8 Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.
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> 9. In the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi & Ors. [1998 ACJ 121] it has been held that the liability of an Insurance Company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the Insurance Company has no Liability also.
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> 10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989/- paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of the vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance."

10. Reverting to the present case, deceased Vijay Kumar Bahuguna, no doubt, died on account of the injuries sustained by him in the accident on 03.08.1997. As the insurance policy taken by him from the respondent Insurance Company did not cover his own risk, the Insurance Company cannot be made liable to pay compensation to the claimants. The Tribunal, therefore, has rightly dismissed the claim petition.

11. As we do not find any infirmity in the impugned Award, whereby the appellants' claim petition was dismissed, the appeal filed by the appellants under Section 173 of the Motor Vehicles Act is liable to be dismissed and hereby dismissed.

12. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**
05.09.2005 05.09.2006

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